THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition Nos.5207 of 2006 and 17073 of 2006

DATED: 21-09-2007.

Between:

K. Kishore Kumar Reddy

.. PETITIONER
(in both the W.Ps.)

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And

Mandal Revenue Officer, Takkali, Srikakulam District and others.

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.. RESPONDENTS
(in both the W.Ps.)

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THE HON'BLE SRI JUSTICE P.S.NARAYANA

Writ Petition Nos.5207 of 2006 and 17073 of 2006

COMMON ORDER:

Heard Sri Vedula Venkataramana, the learned counsel representing the writ petitioner in both these writ petitions, learned Assistant Government Pleader for Revenue and Ms. Lalitha, the learned counsel, representing Sri O.Manohar Reddy, the learned counsel appearing for the 3rd respondent.

2. Sri K. Kishore Kumar Reddy, the writ petitioner, represented by the General Power of Attorney holder, filed these two writ petitions questioning the action of the 1st respondent in purporting to conduct demarcation of the lands in Sy.Nos.443/1, 443/2 and 443/3 of Raghunathapuram village, Tekkali Mandal, Srikakulam District, without the assistance of the 2nd respondent, on the representation of the 3rd respondent, and the consequential demarcation of approach road for the benefit of the 3rd respondent, as without jurisdiction and violative of the provisions of A.P. Survey and Boundaries Act, 1923, and also questioning the action of the 1st respondent in exercising the power of demarcating and creating an approach road from out of the patta lands of the petitioner in Sy.Nos.443/1 to 443/3 of Raghunathapuram village, Tekkali Mandal, Srikakulam District, as arbitrary, illegal and without jurisdiction and for other consequential reliefs.

3. Both these writ petitions are being disposed of by this common order in view of the commonality of facts involved in both the matters.

4. Counter affidavits were filed in both the matters by the 1st

respondent substantially taking the same stand.

5. In W.P.No.5207 of 2006, in the affidavit filed in support of the writ petition, sworn by the Proprietor of M/s. M.S.P. Granites, which is a lessee in respect of granite mineral in an area of 3.05 hectares in Sy.No.1 of Addukonda village, Tekkali Mandal of Srikakulam District, it is averred that the petitioner is the absolute owner and possessor of the land in Sy.Nos.443/2 and 443/3 of Raghunathapuram village, Tekkali Mandal of Srikakulam District, and is the lessee of the land adjoining the land situated in Sy.No.443/1, totally admeasuring Acs.3.05 cents, of the same village. The 3rd respondent is also a mining lease holder of granite mineral in respect of a different extent of land in Sy.No.1 of Addukonda village, Tekkali Mandal, Srikakulam District, and there is no overlapping between the mining lease land of M/s. M.S.P. Granites and the mining lease land of the 3rd respondent. It is stated that the controversy in this writ petition is about the unauthorized action of the 1st respondent in carving out an approach road to the mining lease land of the 3rd respondent, which is passing through the lands of the petitioner in Sy.Nos.443/1, 443/2 and 443/3 of Raghunathapuram village, which is the adjoining village of Addukonda village.

It is also stated that the 1st respondent has issued a notice, dated 03.03.2006, to the 2nd respondent stating that there is a dispute between M/s. Golden Rock Exports, 3rd respondent herein, and M/s. M.S.P. Granites and that the said problem relates to the fixation of boundaries and, hence, the 2nd respondent be determine the dispute with necessary apparatus for settlement. It is also stated that a joint survey, comprising of the Revenue, Survey and Mines Departments, was conducted in respect of the lands covered by Sy.Nos.443/1, 443/2, 443/3, 444/2, 438 and 437, on 06.08.2003, by the Inspector of

Survey, and the officials of the 2nd respondent, vide proceedings dated 12.08.2003, has demarcated the zerot land, endowment land (since purchased), existing gorja (passage), poramboku in Sy.No.1 of Addukonda hill poramboku and left it to the 4th respondent to act on the same. Consequently, the 4th respondent has confirmed the approach road for the use of M/s. Margra Exports Private Limited, as per the sketch enclosed to the letter dated 22.02.2005. It is also stated that for the purpose of exploitation of the land in Sy.No.1 of Addukonda village, there is an approach road, which is existing as per the demarcation done by the Revenue, Survey and Mines Departments.

It is also further stated that despite demarcation of the approach road as per the said proceedings, for convenient use, the petitioner has permitted the deponent herein, his General Power of Attorney holder, to use the land in Sy.Nos.443/1, 443/2 and 443/3 as a private approach road for reaching the mining area of M/s. M.S.P. Granites, of which the deponent herein is the Proprietor. Thus, the present approach road, which M/s. M.S.P. Granites is using, is exclusively a private road and, hence, not accessible to the 3rd respondent or any other lessee of the mining area in Sy.No.1 of Addukonda village. It is also stated that having realized that the approach road, which is in the private land in Sy.Nos.443/1, 443/2 and 443/3, is more convenient, the 3rd respondent seems to have applied to the 1st respondent stating that an approach may be demarcated from the private patta survey numbers. In collusion with the 3rd respondent, the 1st respondent has issued a notice, dated 08.03.2006, to the effect that survey demarcation of Sy.Nos.443 and 444 is going to be conducted by himself on 10.03.2006 at 10.00 a.m. It is also stated that the said notice was not served on the deponent and purposefully a very near date was fixed for survey of the private land in Sy.Nos.443 and 444. In

the said notice, representation, dated 22.02.2006, of the 3rd respondent was referred to as the basis. It is also stated that the 1st respondent, by his earlier proceedings, dated 03.03.2006, has requested the 2nd respondent – Assistant Director, Survey and Land Records, to conduct survey with the technical infrastructure, and, strangely, such an exercise was given up and the 1st respondent has taken the burden of demarcation on him. The 1st respondent has no authority of law to conduct a survey demarcation of the lands, since he is not the authority under the provisions of the A.P. Survey and Boundaries Act, 1923, and the notice, dated 08.03.2006, issued by the 1st respondent, purporting to conduct survey is totally without jurisdiction. Further, while the notice is dated 08.03.2006, the survey was scheduled to be held on 10.03.2006 itself, obviously to hustle through the matter and confer undue advantage to the 3rd respondent. It is also stated that the deponent got issued a legal notice, dated 09.03.2006, to the 1st respondent stating that since he was out of station and since the survey demarcation and fixation of approach road was already fixed on 06.08.2003, the effort of the 1st respondent in causing an inspection on 08.03.2006 and proposing to conduct a survey on 10.03.2006, is totally unwarranted and unjustified. It is also stated that the deponent also got issued a telegram on 09.03.2006 requesting that no survey operations be taken up for accommodating the 3rd respondent. Despite the said legal notice and the telegram, it appears, the 1st respondent, without the assistance of the 2nd respondent, has fixed some boundary stones on 10.03.2006, which gave rise to the situation that the patta land in Sy.Nos.443/1, 443/2 and 443/3 are shown as Government land and as approach road, which can be used by the 3rd respondent. It is also stated that in the absence of a valid survey by the office of the 2nd respondent, the 1st

respondent has no authority of law to demarcate the private lands and provide an approach for the benefit of the 3rd respondent, which is passing through the private land of the petitioner, and that despite the best efforts of the deponent to secure a copy of the so-called demarcation sketch of the 1st respondent, dated 10.03.2006, the 1st respondent is withholding the same and avoiding issue of a copy of the same. As a result of which, the 3rd respondent is using the private land in Sy.Nos.443/1, 443/2 and 443/3 on the assertion that it was demarcated for him by the 1st respondent. It is also stated that it is settled law that a private road cannot be used by third parties and since the deponent is the General Power of Attorney Holder of the petitioner and is the Proprietor of M/s. M.S.P. Granites, he got an implied right to use the private land in Sy.Nos.443/1, 443/2 and 443/3 as approach road to reach the mining lease area of M/s. M.S.P. Granites, but the 3rd respondent has no such right and it is for him to take steps for identifying an approach road from the Government lands. Due to the hand in glove operation of the respondents 1 and 3, the 3rd respondent is benefited by using the private land of the petitioner, which is violative of the constitutional rights guaranteed under Article 300-A of the Constitution of India. It is also stated that the boundary stones, which are put by the office of the 1st respondent on 10.03.2006, have virtually converted the private land into Government land for the benefit of the 3rd respondent and, since the 1st respondent has given a license to the 3rd respondent to use the land of the petitioner as approach road for reaching the mining area and since he is not furnishing copy of the proceedings, dated 10.03.2006, or the sketch drawn by him relating to the demarcation of the private lands in Sy.Nos.443 and 444 of Raghunathapuram village, Tekkali Mandal of Srikakulam District, the petitioner was constrained to file this writ petition.

6. In the counter-affidavit filed by the 1st respondent, at paragraph 3, specific stand is taken that the land in Sy.No.1 of Addukonda Revenue village has a total extent of 2310.80 acres and the same is classified as Government hill poramboke. Various extents of land in the said Sy.No.1 were granted on lease in favour of three companies for quarrying the granite. It is also stated that the land in Sy.Nos.443/1 and 443/3 of Raghunathapuram village is situated adjacent to land in Sy.No.1 of Addukonda village. An extent of 5.93 hectares, 11.530 hectares and 6.237 hectares of land in Sy.No.1 was granted on lease by the Assistant Director, Mines and Geology, Tekkali in respect of M/s. M.S.P. Granite, M/s. Golden Rock Exports and M/s. Marga Exports (P) Limited respectively and the respective leases are in force upto the years 2024, 2023 and 2024 respectively. It is further stated that for the transportation of the material for these granite companies, an extent of 0.18 cents was earmarked as pathway in Sy.No.1 and the petitioner, having his patta land in Sy.No.443/1, 443/2 and 443/3, is also having the quarry lease in Sy.No.1 to an extent of 5.93 hectares in the name of M/s. M.S.P. Granite. The grievance of the petitioner seems to be that the pathway for transportation of the material is being re-demarcated in his private lands i.e. 443/1, 443/2, 443/3 and, hence, approached the Court by filing the present writ petition. The averment of the petitioner to the extent that pathway is being demarcated in Sy.Nos.443/1, 443/2 and 443/3 is misconceived and as much as no pathway is being demarcated in the said survey numbers and pathway is being marked as Sy.No.1 of Addukonda village, which is Government poramboke, and no land in respect of area left for pathway was granted on lease either to writ petitioner or to any other party and, therefore, there are absolutely no merits in the writ petition and it is liable to be dismissed.

7. In the affidavit filed in support of the Writ Petition No.17073 of

2006, sworn by the Proprietor of M/s. M.S.P. Granites, which is a lessee in respect of granite mineral in an area of 3.05 hectares in Sy.No.1 of Addukonda village, Tekkali Mandal of Srikakulam District, the averments made in the affidavit filed in support of W.P.No.5207 of 2006 were reiterated. However, at paragraph 5, it is stated that the petitioner already filed W.P.No.5207 of 2006 with a specific prayer, which had been referred to supra. Further, at paragraph 6, it is stated that the said W.P.No.5207 of 2006 was admitted by this Court on 17.03.2006 and notice was ordered, but till today, the 1st respondent has not filed any counter-affidavit in the said writ petition. However, the 1st respondent has issued the impugned proceedings, dated 12.05.2006, which came to the notice of the petitioner only 30.07.2006, to the effect that the approach road demarcated by him is the Government land and hence no obstruction shall be caused to the said approach road to reach the mining area in Sy.No.1 of Addukonda Village. It is further stated that the said impugned memo was issued to the benefit of the 3rd respondent alone, and that there was never any dispute about the approach road in the Government land, as recited in the impugned memo. On the other hand, on the application and at the behest of the 3rd respondent, the 1st respondent has taken up the work of forming an approach road by conducting demarcation, which is not within his statutory authority. The impugned memo is having the effect of totally depriving the petitioner of the right and enjoyment of the lands in Sy.Nos. 443/1 to 443/3 of Raghunathapuram village. It is also further stated that it is settled law that the State and its authorities cannot deprive the citizen of his right over the property except in accordance with law. Since the 1st respondent has been turning more and more favourable to the 3rd respondent and since a restraint is now imposed against the petitioner from utilizing his own land, which is wrongly described as Government land, the petitioner is constrained to

file this writ petition. Further, the impugned memo of the 1st respondent is not traceable to any of his power under any law for the time being in force, and hence, the same is without jurisdiction and illegal.

8. In the counter-affidavit filed by the 1st respondent in W.P.No.17073 of 2006, the stand taken by him in W.P.No.5207 of 2006, which had been referred to supra, was reiterated.

9. This Court issued *Rule Nisi* in W.P.No.5207 of 2006 on 17.03.2006 and likewise, in W.P.No.17073 of 2006 on 30.10.2006.

10. In the light of the respective stands taken by the parties, which had already been referred to supra, the dispute or controversy would fall under narrow campus.

11. The grievance of the writ petitioner in both these writ petitions is that the 1st respondent, without any authority, is trying to demarcate a path or a road in his private lands. Though specific stand had been taken in the respective counter-affidavits filed by the 1st respondent, there appears to be some controversy in relation to the demarcation, and that the 1st respondent had not taken clear specific stand as to whether the alleged pathway or the road would fall within the patta lands of the petitioner or the same would exclusively fall outside the patta lands. However, the 1st respondent had taken a stand that he is not interfering with the private lands of the writ petitioner.

12. In the light of the facts and circumstances, it is made clear that the respondents cannot interfere with the private lands unless and until due procedure is followed in this regard. It is needless to say that if further verification is necessary, the parties are at liberty to proceed further in clearly demarcating the lands in question, if they are so advised.

13. With the above observation, the writ petitions are disposed of, especially, in the light of the stand taken by the 1st respondent in the counter-affidavits referred to supra. No order as to costs.

P.S. NARAYANA, J

21-09-2007.
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